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09/318,438

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BRAD PITZEL

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25943

7590

11/03/2005

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EXAMINER

DAS, CHAMELI

ART UNIT

PAPER NUMBER

2192

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/318,438

Applicant(s)

PITZEL ET AL.

Examiner

CHAMELI C. DAS

Art Unit

2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on RCE on 10/17/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30,32-37,39,41-48,51-54 and 61-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30,32-37,39,41-48,51-54 and 61-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. This action is in response to the RCE filed on 10/17/05.
2. Claims 1-6, 10, 12-13, 19-21, 25, 27-30, 32-33,36-37, 39, 41-42, 46, 61 and 63 have been amended.
3. Claim 30, 38, 40,49-50, 55-60 and 63 have been cancelled.
4. Claims 1-6, 10, 12-13, 19-21, 25, 27-30, 32-33,36-37, 39, 41-42, 46, 61 and 63 have been rejected.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-2, 5-12, 13-14, 16-21, 24-30, 33, 36-39, 41-42, 45-48, 51-54, 57-58, and 61-62 are rejected under 35 U.S.C. 102(e) as being anticipated by Cheng, US 6,151,643.

***As per claim 1, Cheng discloses:***

- a method of selecting software components for installation on a client computing device (Abstract)
- receiving from the client computing device, a request for the upgrade of a first software components capable of being processed by the client computing device (col 5, lines 19-32), where the "software products" which the clients or users are interested is the "first software component"
- receiving configuration information regarding a software configuration of the client computing device (col 5 lines 30-33)
- including information regarding at least one additional software component that is necessary for the execution of the first software component... missing from the client (col 3, lines 12-25), "the software update information includes a format description associated with the specific installation programs or actions" is the "additional software component" and it is provided by the "network location" which are in the URL (col 3 lines 13-17), clearly indicates that this particular software component is not in the client computing device, at least one additional software component has been determined to be missing from the client computing device (col 3 lines 20-24), where "software update information includes a format description associated with specific

installation programs or actions needed to install the software update” is the “additional software component” and it is not in the client computer is shown in (col 3 lines 10-20)

- identifying a second one or more software components for installation on the client computing device ... client computing device (col 3, lines 1-24), where the “installation program/information” is the second one or more software component as claimed, software component including but not limited to the update for the first component and the at least one necessary additional component is shown in col 3 lines 1-12), it is not limited to the specific software (here first software component) it can update other files (col 3 lines 1-10)
- transmitting the second one or more software components to the client computing device (col 19, lines 55-67, col 20 lines 1-18).

**Claim 20 is the system** claim corresponding to the method claim 1, and rejected under the same reason set forth in connection of the rejection of claim 1 and further Cheng discloses a type of operating system that is executing on the client computer (col 5 lines 10-14, col 13 lines 20-45, col 8 lines 32-40).

**For claim 32**, see the rejection of claim 1 above and further Cheng discloses the operating system that is executing on the computer (col 5 lines 2-17, col 5 lines 20-45).

**As per claims 2, 21, 33, Cheng discloses:**

- receiving a configuration file ... said first software component (col 19 lines 50-67).

***As per claims 5-7, 24-25, 36-37 Cheng discloses:***

- reading only an identifier in the configuration file (col 11, lines 38-46, “The product locator table 803 ... in the system configuration file”)
- sending at a portion ... component server (col 6 lines 24-26, col 7 lines 55-56).

***As per claims 8, 26*** (Cheng, col 4 lines 51-59).

***As per claims 9, 27*** (Cheng, col 13 lines 40-42).

***As per claims 10, 28,*** (Cheng, col 13 lines 40-42).

***As per claims 11, 29,*** (Cheng, col 10 lines 4-5).

***As per claims 12, 30,*** (Cheng, abstract, lines 7-17, col 17 lines 40-42).

***As per claim 13, Cheng discloses:***

- a first computer having one or more system resources ( Fig 2 and col 5, lines 38-40)
- second computer ... one or more components form the first computer (Fig 1, abstract lines 1-17, col 5 lines 19-30), where “request for email notification” inherently including “equipped to receive a request” as claimed
- configuration file ... to be upgraded (col 13, lines 40-42)
- configuration file identifying ... component (abstract lines 7-12)
- an upgrade manager ... executing on the first computer (col 5 lines 2-17, abstract lines 7-9 , col 8 lines 32-40, col 13 lines 25-45), software component including but not limited to the update for the first component and the at least one necessary additional component is shown in col 3 lines 1-12), it is not

limited to the specific software (here first software component) it can update other files (col 3 lines 1-10).

***As per claim 14*** (Cheng, col 5 lines 2-6).

***As per claim 16*** (Cheng, col 5 lines 10-15).

***As per claim 17*** (Cheng, col 20, lines 4-12).

***As per claim 18*** (Cheng, Abstract, lines 4-7).

***As per claim 19, Cheng discloses:***

***- a client computing device .. executing on the client computing device***

(abstract , col 8 lines 55-61, col 13 lines 25-45, col 8 lines 32-40.)

- a configuration file identifying ... configuration computer via the network (col 2 lines 61-67, col 3 lines 1-39, Fig 9)
- the configuration computer which is separate and distinct from the client computer device (Fig 1 and col 3 lines 1-39)
- a component server ... configuration file (Fig 1, col 3, lines 1-24 col 19, lines 55-67, col 20 lines 1-18). For the rest of the limitations see the rejection of claim 1 above.

***For claim 39*** (Fig 7, Fig 2, abstract, and col 5, lines 19-40, col 13, lines 40-42, col 8 lines 32-40, col 13 lines 25-45). For the rest of the limitations see the rejection of claims 13 and 19 above.

***As per claim 41, Cheng discloses:***

- determining one or more client conditions regarding the computer (col 17 lines 40-55)

Art Unit: 2192

- the client condition ... computer (col 5 lines 19-32, col 8 lines 32-40)
- transmitting the request ... client condition (col 8 lines 32-40, col 19 lines 50-55, col 17 lines 40-42)
- receiving the requested component .. executing on the computer (col 5 lines 16-32)
- installing one or more ... the computer (col 5 lines 7-30, col 18 lines 42-45).

***As per claim 42, Cheng discloses:***

- receiving a configuration ... components (col 18, lines 16-45).

***As per claims 45-46, ( Cheng, col 10 lines 55-60, col 10, lines 17-18).***

***As per claims 47, 51, 53 (Cheng, col 7 lines 12-25).***

***As per claims 48, 52 and 54 (Cheng, col 6 lines 51-62).***

***As per claims 45-46, ( Cheng, col 10 lines 55-60, col 10, lines 17-18).***

***As per claim 61, Cheng discloses:***

- a processor... data communication subsystem (col 9 lines 56-67, col 10 lines 1-14)
- an upgrade manager ... available for download (col 13 lines 25-45, col 5 lines 18-32, col 7 lines 61-67, col 8 lines 1-32)
- store the configuration file ... client computing device (col 9 lines 56-67, col 10 lines 1-12)
- generate a upgrade request ... client computing device (col 9 lines 56-67)
- transmit the upgrade request ... executing on the client computing device (col 2 lines 18-30, col 13 lines 30-45).



-  
***For claim 62, Cheng discloses:***

- one or more of a plurality of server ... configuration file (col 14, lines 38-65).
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***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4, 15, 22-23, 34-35, 43-44, and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al (Cheng), US 6,151,643 and further in view of Kenner et al (Kenner), US 6,314,565

***As per claims 3, 4, 15, 22, 23, 34, and 35***, Cheng does not specifically disclose configuration file has associated expiration time and configuration file stops identifying upon the determination that the configuration file has expired.

However, Kenner discloses expiration time with the configuration file (col 6, lines 60-67 and col 7 lines 1-5.), where "script file" is the configuration file (abstract).

The modification would be obvious because one of the ordinary skill in the art would be motivated to stop functioning in whole or in part in the system efficiently.

8. Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al (Cheng), US 6,151,643 and further in view of Kenner et al (Kenner), US 6,314,565

**For claim 63**, Cheng discloses one or more components for which an upgrade is available for download (col 14 lines 30-65, col 15 lines 1-30). Cheng does not specifically disclose streaming media. However, Kenner disclose installing one or more streaming media transmit and install on a client computer (Kenner, col 4 lines 26-67). The modification would be obvious because one of the ordinary skill in the art would be motivated to deliver information in a steady flow the recipient can access as the file is being transmitted.

#### ***Response to the Arguments***

9. Applicant's argument filed on 10/17/05 has been fully considered but they are not persuasive. In remarks, the applicant argues in substance:

**(1) As per claim 1, Cheng does not disclose "identifying a second software components for installation on the client computing ... missing from the client computing device".**

#### ***Response:***

**(1) Cheng discloses the above limitations in device** (col 3, lines 1-24), where the "installation program/information" is the second one or more software component as claimed, software component including but not limited to the update for the first component and the at least one necessary additional

component is shown in col 3 lines 1-12), it is not limited to the specific software (i.e., the first software component) but it can update other files (col 3 lines 1-10).

10. The prior art made or record an not relied upon is considered pertinent to applicant's disclosure.

TITLE: Implantable device and programmer system which permits multiple programmers , US 6792311 B2

TITLE: System for updating selected part of configuration information stored in a memory of a network element depending on status of received state variable, US 6128656 A

TITLE: Method and apparatus for storing and delivering documents on the internet, US 6629138 B1

TITLE: Configuring a wireless computer network to allow automatic access by a guest client device, US 6463473 B1

TITLE: System for synchronizing configuration information of a network element if received trap sequence number is out-of-sequence, US 6330600 B1

TITLE: Method and apparatus to manage network client logon scripts using a graphical management and administration tool, US 6871221 B1

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chameli Das whose telephone number is 571-272-3696.

Art Unit: 2192

The examiner can normally be reached on Monday-Friday from 7:00 A.M. to 3:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Tuan Dam can be reached at 571-272-3695. The fax number for this group is 571-273-8300.

An inquiry of general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 571-272-2100.

*Chameli C. Das*  
**CHAMELI C. DAS**  
**PRIMARY EXAMINER**  
*10/31/05 -*